

RECEIVED

DOCKET FILE COPY ORIGINAL

JAN 14 1994

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of ) MM DOCKET NO. 93-88  
)  
**EZ COMMUNICATIONS, INC.** ) File No. BRH-910401C2  
)  
For Renewal of License of )  
Station WBZZ (FM), )  
Pittsburgh, Pennsylvania )  
)  
**ALLEGHENY COMMUNICATIONS** )  
**GROUP, INC.** ) File No. BPH-910628MC  
)  
For Construction Permit for a )  
New FM Broadcast Station )  
Pittsburgh, Pennsylvania )

To: Administrative Law Judge  
Edward Luton

**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

Charles E. Dziedzic  
Chief, Hearing Branch

Robert A. Zauner

Y. Paulette Laden  
Attorneys  
Mass Media Bureau

Federal Communications Commission  
2025 M Street N.W., Suite 7212  
Washington, D.C. 20554  
(202) 632-6402

January 14, 1994

No. of Copies rec'd  
List ABCDE

*[Handwritten signature]*

Summary

1. It is concluded that EZ is entitled to a renewal expectancy. During the relevant license period, WBZZ presented a substantial amount of non-entertainment programming, much of which was locally produced. It also broadcast more than 40,000 public service announcements.

2. WBZZ's non-entertainment programming addressed ascertained community needs. Finally, letters of support and commendation received by EZ attest to its favorable reputation in the community.

Table of Contents

	<u>Page(s)</u>
Preliminary Statement .....	2
Proposed Findings of Fact .....	2
Conclusions of Law .....	10

**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**Preliminary Statement**

1. By Hearing Designation Order, 8 FCC Rcd 2448 (1993), the Chief, Audio Services Division, designated the above-captioned applications of EZ Communications, Inc. ("EZ") and Allegheny Communications Group, Inc. ("Allegheny") for hearing in a consolidated proceeding upon the following issues:

(a) To determine which of the captioned mutually exclusive applications for authority to operate on Channel 299B at Pittsburgh, Pennsylvania, would, on a comparative basis, best serve the public interest, and

(b) To determine, in light of the evidence adduced pursuant to the specified issue, which of the applications should be granted.

2. Hearing sessions were held on October 26 and 27, 1993. The Bureau hereby submits its Proposed Findings of Fact and Conclusions of Law, which are limited to the renewal expectancy aspect of the comparative issue.

**Proposed Findings of Fact**

3. EZ has operated Station WBZZ (FM), Pittsburgh, Pennsylvania, during the period from August 1, 1984 and July 31, 1991 (renewal period). During the renewal period, the staff of WBZZ engaged in ongoing ascertainment efforts. WBZZ's news director met on a regular monthly basis with community leaders.

His meetings were discussed with the WBZZ department heads on a regular basis. From these discussions a list of the significant issues was developed. In addition, the station participated in group ascertainment meetings under the auspices of the Pittsburgh Radio Organization. The station's general manager, sales manager, program director, business manager and news director attended these group meetings which were held on a quarterly to six month basis. At these meetings, various community leaders, such as the Mayor of Pittsburgh, were invited to speak about the needs and problems of the Pittsburgh community. Notes from the participants attending these meetings were collected and discussed at the station's weekly department head meetings. At these meetings a conclusion would be reached as to what the needs and problems of the community are and how the station would address them. Station employees also ascertained community needs and problems by interviewing community leaders when they came to the radio station. (Tr. 256-59). Finally, the staff obtained information on the needs and problems of the community from the other media in the market, i.e., newspapers, television stations and other radio stations, and by just talking to people. (Tr. 263-64).

4. Based on these ascertainment efforts, the staff prepared a list of those issues believed to be the most important. The station's staff was qualified to judge the relative importance of the ascertained issues based on their long term residency in

Allegheny County. (Tr. 262-63). For the renewal period, the following issues were included in the station's quarterly listing of ascertained needs:

- Aging
- Agriculture
- Animal Welfare
- Business and Labor
- Charity
- Child Abuse
- Civic
- Consumerism
- Crime
- Crisis Help
- Crisis Relief
- Culture and Recreation
- Drug and Alcohol Abuse
- Education
- Entertainment
- Environment
- Family
- Government
- Handicapped
- Health
- Homelessness
- International Issues
- Media
- Military
- Minority Issues
- Personal Finance
- Personal Relationships
- Politics
- Poverty
- Public Safety
- Religion
- Sports
- Unemployment
- Women
- Youth

(WBZZ Ex. 2, p. ii and p. V). During a typical week in the renewal period, excluding news and the interview program "Pittsburgh Opinion," WBZZ broadcast four hours of programming addressing these issues. (Id.).

5. Examples of issue-oriented programs broadcast by WBZZ

are:

**Agriculture USA**

A 15 minute weekly program produced by the U.S. Department of Agriculture. Topics of discussion are related to areas of interest to farmers and customers. This program dealt with the issues of aging, agriculture, consumerism, economy, environment, family, health, international issues, and sports.

**American Focus**

A 30 minute program produced by the Focus On Youth Radio Network. The show consists of weekly interviews with successful people. Guests have included Senator George McGovern, Joan Rivers, Lucille Ball, David Letterman and Mel Blanc. Segments of this program dealt with the issues of aging, business and labor, child abuse, civil rights, crime, culture and recreation, drug and alcohol abuse, economy, education, entertainment, family, government, handicapped, health, homelessness, housing, international issues, media, military, minority issues, personal finance, personal relationships, politics, religion, sports, women and youth.

**Dialogue**

WBZZ's News Director hosts this hour-long discussion program featuring a different guest and subject each half-hour segment. Guests are selected for their pertinence to timely issues and concerns facing the Pittsburgh area. Past guests and subjects have included City Councilwoman Michelle Madoff and Planned Parenthood's view of teen pregnancy. Local and national newsmakers are interviewed. Segments of this program have dealt with the issues of aging, animal welfare, business and labor, child abuse, civil rights, consumerism, crime, culture and recreation, drug and alcohol abuse, economy, education, entertainment, environment, family, government, handicapped, health, homelessness, housing, international issues, media, military, minority issues, personal finance, personal relationships, politics, poverty, public safety, religion, self-help/improvement, sports, transportation, unemployment, women and youth.

### **Healthcare**

This 30 minute program is produced by Public Interest Affiliates, Inc. and features a different health subject each week. The host's topics range from drugs in the schools and on the job to new resources and educational tools for the deaf. Segments of this program have dealt with the issues of animal welfare, child abuse, crime, drug and alcohol abuse, environment, family, health, poverty, religion, women and youth.

### **Larry Black Show**

Aired weekly on Sunday mornings for an hour, this program features interviews with musicians and songwriters. It also has discussions on family problems, and other aspects of life of particular concern to teens and young adults.

### **Master Control**

A 30 minute program produced by the Southern Baptist Radio and TV Commission. Includes interviews and a review of moral issues of concern to young people.

### **Mental Health Matters**

This program features various speakers who discuss lifestyles and their effects on mental health. It regularly deals with problems of alcohol, drug abuse and depression. Segments of this program, have dealt with aging, the handicapped, health, minority issues, personal relationships and public safety.

### **On Track**

Produced by the Southern Baptist Radio and TV Commission, this presentation airs weekly on Sunday mornings. It is 30 minutes of religious guidance and light music with different topics featured each week. Segments of this program have dealt with the issues of drug and alcohol abuse, entertainment, family, religion and youth.

### **Pittsburgh Opinion**

WBZZ conducts "man in the street" interviews each weekday, and they are aired each morning in one minute segments. Questions are asked about topics of current interest or concern, ranging from international issues to how the local hockey team is likely to do. Sixty-



eight one minute segments of Pittsburgh Opinion are broadcast each week.

### **Powerline**

A 30 minute weekly religious program produced by the Southern Baptist Radio and TV Commission includes topics of concern to young people. The discussions are blended with contemporary music. Segments of this program have dealt with the issues of business and labor, drug and alcohol abuse, education, entertainment, family, government, health, international issues, personal relationships, religion, self-help/improvement, women and youth.

### **Prime Time**

A 15 minute weekly program featuring issues relating to aging. Segments of this program have dealt with the issues of aging, consumerism, the economy, handicapped, and housing.

### **Scan**

This 30 minute weekly presentation of the Lutheran Church discusses religious issues and plays contemporary and religious music. Experts discuss everything from educational issues to civil rights and health care problems. Segments of this program have dealt with the issues of aging, agriculture, child abuse, civil rights, culture and recreation, drug and alcohol abuse, education, entertainment, environment, family, government, handicapped, health, homelessness, international issues, minority issues, personal finance, personal relationships, politics, poverty, religion, self-help/improvement, women and youth.

### **Streams in the Desert**

A 30 minute weekly religious program produced by the Southern Baptist Radio and TV Commission. This program is geared to an 18 to 34-year-old target audience. Contemporary music is interspersed with counseling on issues facing young people. Segments of this program have dealt with the issues of aging, culture and recreation, drug and alcohol abuse, education, entertainment, family, government, health, international relationships, religion, self-help/improvement, sports and youth.

### The Reviewing Stand

A 30 minute feature broken into three segments which offer information about issues of national and international concern. Segments of this program have dealt with the issues of education, entertainment, family, government, health, international issues, media, poverty, public safety, and women.

### Views of the News

A 15 minute program aired on Sunday mornings which discussed current problems and reflections. Segments of this program have dealt with the issues of aging, drug and alcohol abuse, education, family, religion and youth.

(WBZZ Ex. 2, pp. vi-ix). The above programs were broadcast from 4:00 a.m. to 8:00 a.m. on Sunday mornings. The locally produced program "Dialogue" was broadcast from 7:00 a.m. to 8:00 a.m. on Sunday. (Tr. 242-45).

6. In addition, during the last license term WBZZ aired more than 40,000 public service announcements for identifiable organizations. WBZZ Ex. 2, p. 1. WBZZ also devoted more than 4 hours per week to news and weather. WBZZ Ex. 2, p. 3. WBZZ broadcast news Monday through Friday beginning at 12:57 a.m. and ending at 8:57 a.m. (Tr. 238-40). Weather information was broadcast twice an hour during morning drive time. (Tr. 241).

7. EZ offered into evidence a substantial number of letters in support of its programming, and its activities on behalf of the community. These include letters of appreciation from leaders of local service organizations, such as Mothers Against

Drunk Drivers, the Whale's Tale, St. Francis Health Foundation, D.T. Watson Rehabilitation Services, Alcoholic Recovery Center, Chronic Fatigue Syndrome Association, Transplant Recipient International Organization, Leukemia Society, Alcohol and Drug Program of United Mental Health, Inc., Cystic Fibrosis Foundation, Educational Network for Eating Disorders, and the March of Dimes Birth Defects Foundation. In addition, letters setting forth WBZZ's favorable reputation and expressing appreciation were written by Julian E. Bailes, M.D., member of the Department of Neurosurgery at Allegheny General Hospital; Sophie Masloff, Mayor of the City of Pittsburgh, and Bob O'Connor, member of the Pittsburgh City Council. These letters indicate that, in addition to the broadcast of information relevant to these organizations, WBZZ's staff actively participated in many of the organizations' fund raising and other activities. WBZZ Ex. 1.

8. Robert L. Pitts is the Mayor of Wilkinsburg, Pennsylvania, a borough which borders Pittsburgh. He testified that there are a variety of youth-related problems which are particularly acute in the Wilkinsburg community. He knows of no effort or outreach by WBZZ to address such issues. Allegheny Ex. 9. Lois McDonald, a resident of Pittsburgh, Pennsylvania, is the Chairperson of the Communications Committee for the Pittsburgh chapter of the National Association for the Advancement of Colored People (NAACP). She opines, based on her

monitoring of broadcast stations in the area, that WBZZ's programming demonstrated a lack of concern for the Pittsburgh community. Specifically, she stated that the station has not offered programming of interest to the local African-American community or covered issues of importance to the local African-American community. Allegheny Ex. 13.

### Conclusions of Law

9. It is well settled that, in a renewal proceeding, an incumbent's past performance affords the Commission the strongest and most reasonable basis for determining whether the public interest will be served by license renewal. Office of Communications of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966); Belo Broadcasting Corp., 47 FCC 2d 540 (1974). Thus, a licensee "runs on its record . . . ." United Church of Christ, at 1007; Simon Geller, 90 FCC 2d 250, 271 (1982) (subsequent history omitted). A sound and favorable record, substantially above the level of mediocre service, gives rise to a renewal expectancy which, in turn, warrants a preference in comparative renewal proceedings. See Broadcast Communications, Inc., 93 FCC 2d 1162, 1166 (1983), modified 97 FCC 2d 61 (1984), aff'd sub nom. Genesis Broadcasting, Inc. v. FCC. 759 F.2d 959 (D.C. Cir. 1985), citing Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981), aff'd sub nom. Central Florida Enterprises, Inc. v. FCC, 683 F.2d 503 (D.C. Cir. 1982), and Radio Station WABZ, Inc., 90

FCC 2d 818 (1982), aff'd sub nom. Victor Broadcasting, Inc. v. FCC, 722 F.2d 756 (D.C. Cir. 1983).

10. A substantial performance warranting a renewal expectancy can be demonstrated by any type of showing reasonably related to service over and above what would be considered minimal. Broadcast Communications, Inc., supra. In this regard, the Commission has identified the following criteria:

- (1) the amount of non-entertainment programming presented, the time of day it is presented and whether it is directed to local needs and interests,
- (2) the amount of locally produced programming, and
- (3) the reputation of the station in the community.

Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 4 FCC Rcd 6363, 6368, n. 11 (1989).

11. EZ has shown that WBZZ has presented a substantial amount of non-entertainment programming during the preceding license period. This programming is aired primarily on Sunday mornings. WBZZ's primary vehicle for meeting ascertained needs is its hour long, locally produced, Sunday morning interview program "Dialogue." Guests for this program were selected based on their relevance to local Pittsburgh issues, which the licensee had ascertained via planned and unplanned interviews. WBZZ also broadcast a substantial amount of locally produced news and weather information during morning drive time. Each week day

during the renewal period, WBZZ also broadcast "Pittsburgh Opinion" which featured "man in the street" interviews. These interviews focused on current topics of concern to the community. Sixty-eight one-minute segments of this program were broadcast each week. Finally, WBZZ has broadcast an impressive number of PSA's (more than 40,000) over its license term. Letters of support and commendation received by EZ attest to its favorable reputation in the community. This reputation evidence is not significantly undermined by Allegheny's showing that two persons were dissatisfied.

12. Accordingly, EZ has established that it is entitled to a renewal expectancy, and it is so concluded.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

  
Charles E. Dziedzic  
Chief, Hearing Branch

  
Robert A. Zauner

  
Y. Paulette Laden  
Attorneys  
Mass Media Bureau

Federal Communications Commission  
2025 M Street N.W., Suite 7212  
Washington, D.C. 20554  
(202) 632-6402

January 14, 1994

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 14th day of January 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law"** to:

Rainer K. Kraus, Esq.  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W., Suite 1000  
Washington, D.C. 20036

Morton L. Berfield, Esq.  
Cohen & Berfield  
1129 20th Street, N.W.  
Washington, D.C. 20036

Michelle C. Mebane  
Michelle C. Mebane